Supreme Court, U.S.
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NO. 99-299

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1999

JONATHAN G. KING AND SARAH S. KING
Petitioners

vs.

THE TOWNSHIP OF EAST LAMPETER, et al.
Respondents

On Petition For Writ of Certiorari To The
United States Court Of Appeals
For The Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Appeal Court properly conclude that Petitioner's claims, or some of them, were barred by the application of the statute of limitations?

2. Did the Appeal Court at the District Court properly apply the standard of review governing Motions for Summary Judgment?

3. Whether the Petitioners are precluded from pursuing a Fourth Amendment claim for unlawful seizure of property since that issue was not presented to either the District Court or the Appeal Court?

4. Whether the Appeal Court and the District Court properly concluded that Petitioners are not entitled to relief pursuant to 42 U.S.C. §1981?

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STATEMENT OF THE CASE

This civil action arises out of what Plaintiffs allege amounted to discriminatory conduct by East Lampeter Township and its officials against Plaintiffs dating back to the 1970's. Sporadically over the last two decades, East Lampeter Township was forced to take enforcement actions against Plaintiffs. Plaintiffs asserted that those enforcement activities against them were discriminatory in nature, and constituted violations of Plaintiffs' federally protected rights.

Over the last two decades, three separate judges (Bucher, Mueller, and Stengel) of the Court of Common Pleas of Lancaster County, Pennsylvania have heard and decided various matters regarding the Kings and their property situated in East Lampeter Township. Each of those judges, on more than one occasion, has expressed a

disgust with Plaintiffs' purposeful actions in failing to follow: the ordinances in East Lampeter Township; various orders and decrees entered by the Lancaster County Court of Common Pleas over the years; and a settlement agreement executed by Jonathan King. In October, 1979, Judge Mueller found Jonathan King guilty of civil contempt and authorized the local Sheriff's office to have him placed in the Lancaster County Prison due to his continued disregard for previous Orders of Court.

Problems continued regarding the Kings, their property and their failure to adhere to the valid and enforceable local ordinances and Orders of the Lancaster County Court of Common Pleas. Following a hearing in April, 1991, the Kings were again found to be in civil contempt for failing to comply with the Lancaster County Court of Common Pleas' prior Court Orders. The Kings

appealed the finding of civil contempt to the Commonwealth Court of Pennsylvania which affirmed Judge Bucher's finding on August 7, 1992. In affirming the finding of civil contempt, the Commonwealth Court noted: "It's abundantly clear from the record that the trial court's Order holding the Kings in contempt was amply supported by substantial evidence." There was no ambiguity in the Orders which would justify the willful and deliberate non-compliance with the conditions therein.

On June 6, 1995, then Zoning Officer, Russell E. Latschar, issued an enforcement notice to the Kings indicating that they were in violation of several provisions of the local zoning ordinance. The enforcement notice also instructed Plaintiffs as to when compliance must be commenced and completed, and the potential result and/or penalties if Plaintiffs failed to comply with the enforcement

notice. Due to the continuous and repeated violations and disregard of Court Orders by the Kings over the span of almost twenty years, the Township was compelled to file a Motion for Preliminary Injunction and a Complaint in Equity requesting injunctive relief with the Lancaster County Court of Common Pleas on or about June 9, 1995. Following an evidentiary hearing, Judge Stengle issued a final decree on October 23, 1997 establishing seven different requirements that the Kings were obligated to meet as a result of that Court Order. On February 6, 1998, Judge Mueller entered an Order finding Jonathan King guilty of civil contempt and noting that he had intentionally and willfully violated the agreement which he signed on October 12, 1997 which was embodied in the Court's Order of the same date, and that he made no effort to comply with any of the conditions he agreed to under that agreement signed

by him in the presence of Judge Mueller.

On August 13, 1998, the District Court issued a comprehensive and erudite opinion granting Defendants' Motions for Summary Judgment and denying Plaintiffs' dispositive motion. After thorough and extensive review of the factual record which spawned the civil action, Judge Van Antwerpen concurred with the assessment of the state court counterparts and found that the Kings have repeatedly and consciously violated zoning regulations and have ignored Court Orders and agreements signed by Mr. King himself.

On May 5, 1999, the United States Court of Appeals for the Third Circuit concluded that there was no merit to any of the Kings' claims made in the United States District Court and affirmed the trial court's August 13, 1998 Order.

REASONS FOR DENYING THE WRIT

The decision of the Third Circuit Court of Appeals does not conflict with decisions of this Court or other circuit courts.

The threshold issue on the Petition for Writ of Certiorari, as was the case in the courts below, is the avocation of the statute of limitations. Pursuant to this Honorable Court's directive in Wilson v. Garcia, 471 U.S. 261 (1985) and Board of Regents of the University of the State of New York v. Tomanio, 446 U.S. 478, 483-84 (1980), both the District Court and the Third Circuit apply Pennsylvania's two year statute of limitations for personal injury claims to Plaintiffs' federal civil rights claims. The District Court held, and the Third Circuit affirmed, that the majority of Plaintiffs' claims were barred by the two year statute of limitations. The courts below also properly concluded that Plaintiffs failed to present any evidence that

the Township's attempts to enforce its zoning regulations were part of a continuing pattern of harassment or discrimination. Moreover, since the record was devoid of any evidence that the Defendants engaged in any unconstitutional conduct within the two year period prior to the initiation of the lawsuit, and since the alleged prior unconstitutional conduct was not part of a continuing, ongoing pattern, the continuing violation theory did not apply in this case. See, West v. Philadelphia Electric Company, 45 F.3d 744, 754-55 (3d Cir. 1995); Courtney v. LaSalle University, 124 F.3d 494, 505 (3d Cir. 1997). Both the trial court and the Third Circuit applied the appropriate legal standard and concluded that the majority of Plaintiffs' claims were barred by the two year statute of limitations.

The second issue raised in the Petition for Writ of Certiorari is that the District Court and appellate court

abused the summary judgment procedure. Petitioners concede, however, that both the District Court and appellate court utilized the burden shifting procedure set forth in Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) and held that Respondents, as the moving party, bore the initial burden of identifying those portions of the record which they believe demonstrate the absence of material fact. The non-moving party must then demonstrate the existence of evidence that would support a jury finding in its favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). On appeal, the Third Circuit exercised plenary review of the District Court's Order granting summary judgment in favor of the Defendants. See e.g., Watters v. City of Philadelphia, 55 F.3d 886, 891 (3d Cir. 1995). After reviewing the factual record, the Third Circuit found no merit with any of the nine issues raised on appeal and

concluded that no reasonable juror could infer that the Defendants deprived Plaintiffs of any federally protected rights. Since the appropriate legal standards were applied in this case, the mere fact that Plaintiffs could not establish any genuine issue of material fact in support of their claims is not a proper basis for granting a Writ of Certiorari.

Thirdly, Respondents contend that Petitioners have waived any appeal on the issue of whether the District Court erred as a matter of law in allegedly ignoring Petitioners' Fourth Amendment claim for unlawful seizure of property since that issue was not raised on appeal to the Third Circuit. In the alternative, even if that issue is properly before this Honorable Court, which is denied, the District Court wrote an exhaustive 90 page opinion, carefully examining the facts and law. Regardless of whether the claim was couched as a Fourth Amendment unlawful

seizure or some other civil rights claim, there simply were no facts of record to establish an unconstitutional conduct by Defendants within two years of the filing of the Complaint in this action. Consequently, said claim is barred by application of the two year statute of limitations and/or the award of summary judgment in favor of the Defendants was appropriate because Plaintiffs failed to create any triable issue of material fact on that claim.

Finally, Petitioners alleged that both the District Court and Third Circuit erred in denying relief pursuant to 42 U.S.C. §1981. In the trial court proceedings, Plaintiffs conceded Section 1981 does not protect them against religious discrimination. See Vuksta v. Bethlehem Steel Corp., 540 F. Supp. 1276, 1281 (E.D. Pa. 1982), aff'd, 707 F.2d 1405 (1983). Moreover, Petitioners have not, and cannot cite to any supporting precedent for their assertion

that the Amish are a distinctly identifiable ethnic or racial group entitled to protection under that statute. More importantly, even if such precedent existed, which is denied, the record before both the District Court and the appellate court was devoid of any evidence of ethnic and/or racial animosity on the part of the Defendants. Thus, the Defendants were entitled to summary judgment as a matter of law on the Section 1981 claims.

Conclusion

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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